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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,574	07/02/2003	Norman Pokras	POKRA.61961	4290
27629	7590	10/01/2004	EXAMINER	
FULWIDER PATTON LEE & UTECHT, LLP 200 OCEANGATE, SUITE 1550 LONG BEACH, CA 90802			LEWIS, AARON J	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 10/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/612,574

Applicant(s)

POKRAS, NORMAN

Examiner

AARON J. LEWIS

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benzel ('170) in view of Wilen ('237) and Saitta et al.('776).

As to claim 1, Benzel (fig.1) discloses a swimming snorkel apparatus to be worn by a swimmer comprising: a mounting strap (16) for encircling the head of the swimmer and cooperating with the mask to secure the mask in place on the head; a snorkel device attached (14,15) to the mounting strap and including a mouthpiece (10) and a snorkel tube (13,36); and including an oxygen containing canister (23), a canister connector for mounting the canister to the strap, and an oxygen supply tube (21) for communicating supplemental oxygen from the canister to the snorkel device.

The differences between Benzel and claim 1 are a mask for receipt on the face of the swimmer constructed to permit vision therethrough and an oxygen supply system attached to the mounting strap.

Bonin, Jr. teaches a mask for receipt on the face of a swimmer constructed to permit vision therethrough.

It would have been obvious to modify the swimming snorkel apparatus of Benzel to include a mask because it would have provided a means for protecting a swimmer's eyes and enabling comfortable vision underwater as taught by Bonin, Jr..

Saitta et al. Teach an oxygen supply canister (28) attached (32) to a mounting strap (14) for the purpose of securing the canister in place.

It would have been obvious to modify the oxygen tank of Benzel to provide a smaller oxygen tank because it would have made it easier for a swimmer to carry as taught by Saitta et al..

As to claim 2, Benzel (col.4, lines 3-7) discloses the swimmer inspiring atmospheric air through the snorkel device while simultaneously inspiring the supplemental oxygen.

As to claim 3, the snorkel of Benzel further defines an inspiration path (21-13) that extends along the length of the snorkel tube (13), through the mouthpiece (10) and to the mouth of the swimmer and along which the user may inspire atmospheric air; and the oxygen supply system provides supplemental oxygen to the snorkel device at a point (20) along the inspiration path for simultaneous inspiration by the swimmer along with the atmospheric air.

As to claim 4, Benzel discloses the snorkel tube (13 of fig.1) is further formed with an outer wall, an inner wall and an oxygen inlet (20) opening that extends from the outer wall to the inner wall; and the oxygen supply tube (21) is connected in fluid communication with the inlet opening.

As to claim 5, Benzel discloses the mouthpiece is formed with an oxygen inlet opening (i.e. the single opening in the mouthpiece 10 of Benzel) in communication with

the mouth of the swimmer; and the oxygen supply tube is connected in fluid communication with the inlet opening (20).

As to claim 6, Benzel discloses a flow control (18) for initiating, terminating and controlling the rate of the flow of oxygen from the canister to the oxygen supply tube.

As to claim 7, Benzel discloses the oxygen supply system includes a flow valve (22) that is configured for complementary and releasable receipt of the canister and is in communication with the oxygen supply tube; and the flow of oxygen from the canister and through the flow valve is initiated when the canister is received in the flow valve.

As to claim 8, Benzel discloses the flow valve (22) includes a flow control for initiating, terminating and controlling the rate of the flow of oxygen through the flow valve to the oxygen supply tube (col.2, lines 19-20).

As to claim 9, Benzel as modified by Saitta et al. teaches a canister housing (33 of Saitta) configured for receiving the canister therein, and the canister connector mounts the canister housing to the mounting strap (figs. 1,2,4,5 of Saitta).

As to claim 10, Benzel discloses the oxygen supply system includes a flow valve (22) that is configured for complementary and releasable receipt of the housing and is in communication with the oxygen supply tube; and the flow of oxygen from the canister and through the flow valve is initiated when the housing is received in the flow valve.

As to claim 11, Benzel as modified by Saitta et al. (figs. 1,2,4,5) teaches the canister connector mounts the canister directly to the mounting strap.

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Claims 12-17 are equivalent in scope to claims 1-11 and are included in Benzel as modified by Saitta et al. and Bonin, Jr. for the reasons set forth above with respect to claims 1-11.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of the art is cited to show relevant swimming snorkel devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (703) 308-0716. The examiner can normally be reached on 9:30AM-6:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HENRY A. BENNETT can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


AARON J. LEWIS

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Primary Examiner
Art Unit 3743

Aaron J. Lewis
September 23, 2004